

EXHIBIT N

2011.01.24 Trial Transcript Day 13 1/24/2011 2:45:00 PM

<p>3078</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. 7 : 3:09CV620 8 vs. : 9 : 10 : 11 : 12 : 13 : 14 : 15 : 16 : 17 : 18 : 19 : 20 : 21 : 22 : 23 : 24 : 25 : 26 : 27 : 28 : 29 : 30 : 31 : 32 : 33 : 34 : 35 : 36 : 37 : 38 : 39 : 40 : 41 : 42 : 43 : 44 : 45 : 46 : 47 : 48 : 49 : 50 : 51 : 52 : 53 : 54 : 55 : 56 : 57 : 58 : 59 : 60 : 61 : 62 : 63 : 64 : 65 : 66 : 67 : 68 : 69 : 70 : 71 : 72 : 73 : 74 : 75 : 76 : 77 : 78 : 79 : 80 : 81 : 82 : 83 : 84 : 85 : 86 : 87 : 88 : 89 : 90 : 91 : 92 : 93 : 94 : 95 : 96 : 97 : 98 : 99 : 100 : 101 : 102 : 103 : 104 : 105 : 106 : 107 : 108 : 109 : 110 : 111 : 112 : 113 : 114 : 115 : 116 : 117 : 118 : 119 : 120 : 121 : 122 : 123 : 124 : 125 : 126 : 127 : 128 : 129 : 130 : 131 : 132 : 133 : 134 : 135 : 136 : 137 : 138 : 139 : 140 : 141 : 142 : 143 : 144 : 145 : 146 : 147 : 148 : 149 : 150 : 151 : 152 : 153 : 154 : 155 : 156 : 157 : 158 : 159 : 160 : 161 : 162 : 163 : 164 : 165 : 166 : 167 : 168 : 169 : 170 : 171 : 172 : 173 : 174 : 175 : 176 : 177 : 178 : 179 : 180 : 181 : 182 : 183 : 184 : 185 : 186 : 187 : 188 : 189 : 190 : 191 : 192 : 193 : 194 : 195 : 196 : 197 : 198 : 199 : 200 : 201 : 202 : 203 : 204 : 205 : 206 : 207 : 208 : 209 : 210 : 211 : 212 : 213 : 214 : 215 : 216 : 217 : 218 : 219 : 220 : 221 : 222 : 223 : 224 : 225 : 226 : 227 : 228 : 229 : 230 : 231 : 232 : 233 : 234 : 235 : 236 : 237 : 238 : 239 : 240 : 241 : 242 : 243 : 244 : 245 : 246 : 247 : 248 : 249 : 250 : 251 : 252 : 253 : 254 : 255 : 256 : 257 : 258 : 259 : 260 : 261 : 262 : 263 : 264 : 265 : 266 : 267 : 268 : 269 : 270 : 271 : 272 : 273 : 274 : 275 : 276 : 277 : 278 : 279 : 280 : 281 : 282 : 283 : 284 : 285 : 286 : 287 : 288 : 289 : 290 : 291 : 292 : 293 : 294 : 295 : 296 : 297 : 298 : 299 : 300 : 301 : 302 : 303 : 304 : 305 : 306 : 307 : 308 : 309 : 310 : 311 : 312 : 313 : 314 : 315 : 316 : 317 : 318 : 319 : 320 : 321 : 322 : 323 : 324 : 325 : 326 : 327 : 328 : 329 : 330 : 331 : 332 : 333 : 334 : 335 : 336 : 337 : 338 : 339 : 340 : 341 : 342 : 343 : 344 : 345 : 346 : 347 : 348 : 349 : 350 : 351 : 352 : 353 : 354 : 355 : 356 : 357 : 358 : 359 : 360 : 361 : 362 : 363 : 364 : 365 : 366 : 367 : 368 : 369 : 370 : 371 : 372 : 373 : 374 : 375 : 376 : 377 : 378 : 379 : 380 : 381 : 382 : 383 : 384 : 385 : 386 : 387 : 388 : 389 : 390 : 391 : 392 : 393 : 394 : 395 : 396 : 397 : 398 : 399 : 400 : 401 : 402 : 403 : 404 : 405 : 406 : 407 : 408 : 409 : 410 : 411 : 412 : 413 : 414 : 415 : 416 : 417 : 418 : 419 : 420 : 421 : 422 : 423 : 424 : 425 : 426 : 427 : 428 : 429 : 430 : 431 : 432 : 433 : 434 : 435 : 436 : 437 : 438 : 439 : 440 : 441 : 442 : 443 : 444 : 445 : 446 : 447 : 448 : 449 : 450 : 451 : 452 : 453 : 454 : 455 : 456 : 457 : 458 : 459 : 460 : 461 : 462 : 463 : 464 : 465 : 466 : 467 : 468 : 469 : 470 : 471 : 472 : 473 : 474 : 475 : 476 : 477 : 478 : 479 : 480 : 481 : 482 : 483 : 484 : 485 : 486 : 487 : 488 : 489 : 490 : 491 : 492 : 493 : 494 : 495 : 496 : 497 : 498 : 499 : 500 : 501 : 502 : 503 : 504 : 505 : 506 : 507 : 508 : 509 : 510 : 511 : 512 : 513 : 514 : 515 : 516 : 517 : 518 : 519 : 520 : 521 : 522 : 523 : 524 : 525 : 526 : 527 : 528 : 529 : 530 : 531 : 532 : 533 : 534 : 535 : 536 : 537 : 538 : 539 : 540 : 541 : 542 : 543 : 544 : 545 : 546 : 547 : 548 : 549 : 550 : 551 : 552 : 553 : 554 : 555 : 556 : 557 : 558 : 559 : 560 : 561 : 562 : 563 : 564 : 565 : 566 : 567 : 568 : 569 : 570 : 571 : 572 : 573 : 574 : 575 : 576 : 577 : 578 : 579 : 580 : 581 : 582 : 583 : 584 : 585 : 586 : 587 : 588 : 589 : 590 : 591 : 592 : 593 : 594 : 595 : 596 : 597 : 598 : 599 : 600 : 601 : 602 : 603 : 604 : 605 : 606 : 607 : 608 : 609 : 610 : 611 : 612 : 613 : 614 : 615 : 616 : 617 : 618 : 619 : 620 : 621 : 622 : 623 : 624 : 625 : 626 : 627 : 628 : 629 : 630 : 631 : 632 : 633 : 634 : 635 : 636 : 637 : 638 : 639 : 640 : 641 : 642 : 643 : 644 : 645 : 646 : 647 : 648 : 649 : 650 : 651 : 652 : 653 : 654 : 655 : 656 : 657 : 658 : 659 : 660 : 661 : 662 : 663 : 664 : 665 : 666 : 667 : 668 : 669 : 670 : 671 : 672 : 673 : 674 : 675 : 676 : 677 : 678 : 679 : 680 : 681 : 682 : 683 : 684 : 685 : 686 : 687 : 688 : 689 : 690 : 691 : 692 : 693 : 694 : 695 : 696 : 697 : 698 : 699 : 700 : 701 : 702 : 703 : 704 : 705 : 706 : 707 : 708 : 709 : 710 : 711 : 712 : 713 : 714 : 715 : 716 : 717 : 718 : 719 : 720 : 721 : 722 : 723 : 724 : 725 : 726 : 727 : 728 : 729 : 730 : 731 : 732 : 733 : 734 : 735 : 736 : 737 : 738 : 739 : 740 : 741 : 742 : 743 : 744 : 745 : 746 : 747 : 748 : 749 : 750 : 751 : 752 : 753 : 754 : 755 : 756 : 757 : 758 : 759 : 760 : 761 : 762 : 763 : 764 : 765 : 766 : 767 : 768 : 769 : 770 : 771 : 772 : 773 : 774 : 775 : 776 : 777 : 778 : 779 : 780 : 781 : 782 : 783 : 784 : 785 : 786 : 787 : 788 : 789 : 790 : 791 : 792 : 793 : 794 : 795 : 796 : 797 : 798 : 799 : 800 : 801 : 802 : 803 : 804 : 805 : 806 : 807 : 808 : 809 : 810 : 811 : 812 : 813 : 814 : 815 : 816 : 817 : 818 : 819 : 820 : 821 : 822 : 823 : 824 : 825 : 826 : 827 : 828 : 829 : 830 : 831 : 832 : 833 : 834 : 835 : 836 : 837 : 838 : 839 : 840 : 841 : 842 : 843 : 844 : 845 : 846 : 847 : 848 : 849 : 850 : 851 : 852 : 853 : 854 : 855 : 856 : 857 : 858 : 859 : 860 : 861 : 862 : 863 : 864 : 865 : 866 : 867 : 868 : 869 : 870 : 871 : 872 : 873 : 874 : 875 : 876 : 877 : 878 : 879 : 880 : 881 : 882 : 883 : 884 : 885 : 886 : 887 : 888 : 889 : 890 : 891 : 892 : 893 : 894 : 895 : 896 : 897 : 898 : 899 : 900 : 901 : 902 : 903 : 904 : 905 : 906 : 907 : 908 : 909 : 910 : 911 : 912 : 913 : 914 : 915 : 916 : 917 : 918 : 919 : 920 : 921 : 922 : 923 : 924 : 925 : 926 : 927 : 928 : 929 : 930 : 931 : 932 : 933 : 934 : 935 : 936 : 937 : 938 : 939 : 940 : 941 : 942 : 943 : 944 : 945 : 946 : 947 : 948 : 949 : 950 : 951 : 952 : 953 : 954 : 955 : 956 : 957 : 958 : 959 : 960 : 961 : 962 : 963 : 964 : 965 : 966 : 967 : 968 : 969 : 970 : 971 : 972 : 973 : 974 : 975 : 976 : 977 : 978 : 979 : 980 : 981 : 982 : 983 : 984 : 985 : 986 : 987 : 988 : 989 : 990 : 991 : 992 : 993 : 994 : 995 : 996 : 997 : 998 : 999 : 1000 :</p>	<p>3080</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz represent the 9 defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. I was very sorry to hear 13 about Ms. Albert's father passing away. You all both wrote 14 letters about it. I don't see the point in bringing that to 15 the attention the jury. Do either one of you? 16 In the old days, when people didn't do what they were 17 supposed to do, they got keelhaunched. I'm about ready to 18 institute that procedure here. It's time for the jury to get 19 going, and I've had to read all this stuff now. I told you 20 what to do about this verdict form, and it was pretty easy, and 21 it's unnecessary to go through all this stuff. 22 Now, apparently we're going to have to revise it 23 anyway because -- and some of the instructions. What 24 instructions have to be revised because Lawson is not 25 contending that the RIMS brochure is prior art? Which one is</p>
<p>3079</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>3081</p> <p>1 arguing? 2 MR. YOUNG: Your Honor, David Young for ePlus. It's 3 instruction 3-A that was submitted to the Court over the 4 weekend. It lists as I think reference number three, RIMS 5 brochure, and that would have to come out now because it 6 appears that Lawson does not have that as an anticipated 7 reference on its own verdict form. 8 THE COURT: Is that right? 9 MR. McDONALD: Yes, that's right, Your Honor. 10 THE COURT: So I suppose I need to tell the jury 11 simply to disregard any testimony about the RIMS brochure as 12 prior art. 13 MR. McDONALD: No, it not anticipatory prior art 14 meaning it's not all by itself anticipating a claim. We're 15 still using it for obviousness and support for the on sale, the 16 RIMS as prior art and 102(a) and (b), but the brochure, all by 17 itself, we're not contending is an anticipating reference, but 18 it would be used to support number one in the instruction which 19 is the Fisher RIMS system as prior art. 20 THE COURT: What do you mean, to be used to support? 21 If you're going to use it -- 22 MR. McDONALD: It's evidence of the Fisher RIMS 23 system as it was being sold and -- 24 THE COURT: Well, if it's evidence of it, it comes 25 out of 39, too, because you're not contending that it is</p>

2011.01.24 Trial Transcript Day 13 1/24/2011 2:45:00 PM

<p style="text-align: right;">3174</p> <p>1 choice. And that doesn't stop ePlus from going to the</p> <p>2 Patent Office, but it is true and the Judge will</p> <p>3 instruct you that even if a product isn't the subject</p> <p>4 of a patent like TV/2, if it's on sale more than a</p> <p>5 year before the filing date of the ePlus patent, it's</p> <p>6 still prior art. EPlus can't go get a patent on that</p> <p>7 same thing. So that's how it works. So that's why</p> <p>8 the Patent Office doesn't always have all the details</p> <p>9 about what everybody is doing out there.</p> <p>10 So that's why because you have this critical</p> <p>11 information here in the courtroom that the Patent</p> <p>12 Office didn't get why you should reach a different</p> <p>13 conclusion from the Patent Office. So that's why you</p> <p>14 should decide that the claims are invalid.</p> <p>15 Let's go down to question No. 3 about</p> <p>16 infringement. We made it pretty clear from the first</p> <p>17 moment in this case that this issue came down to the</p> <p>18 catalogs issue.</p> <p>19 And if we could go to 45F. Mr. Weaver at</p> <p>20 least acknowledged that 11 of the 12 claims in this</p> <p>21 case required not just one catalog, but multiple</p> <p>22 catalogs in the Lawson system. So if Lawson doesn't</p> <p>23 have multiple catalogs, Lawson at least does not</p> <p>24 infringe those 11 claims. We're all on the same page</p> <p>25 on that. That's why we didn't waste your time on all</p>	<p style="text-align: right;">3176</p> <p>1 preferably, right? Then a textual description of</p> <p>2 items and preferably, not necessarily, images of the</p> <p>3 items.</p> <p>4 So that meets the definition of a catalog</p> <p>5 pretty well. That holds up with your common sense.</p> <p>6 And it's pretty consistent if we go to slide 48, I</p> <p>7 think it is. Even what the patent says about</p> <p>8 catalogs. This is a feature of the invention to have</p> <p>9 multiple catalogs from different suppliers. And it</p> <p>10 gives these examples. And I'll summarize it here, but</p> <p>11 basically it talks about published by a vendor,</p> <p>12 distributor, having the distributor's catalog numbers</p> <p>13 for their listed products. And also vendor</p> <p>14 manufacturer part numbers. Down at the bottom, line</p> <p>15 52 there, it further contained catalogs published by</p> <p>16 some of the vendor manufacturers. Again having part</p> <p>17 numbers and the like.</p> <p>18 Then if you go down to about line 56. It can</p> <p>19 also contain catalogs published by outside suppliers,</p> <p>20 other manufacturers, distributors listing their vendor</p> <p>21 products different from those in the distributor</p> <p>22 catalog. So these are all these different published</p> <p>23 things out there.</p> <p>24 So if we go back to 46. So that was the</p> <p>25 Court's definition of "catalog." Very consistent with</p>
<p style="text-align: right;">3175</p> <p>1 these other deals in the case, why it really came down</p> <p>2 to the catalogs.</p> <p>3 And if we go to the slide 46, this was the</p> <p>4 Court's definition of catalogs. It has the term</p> <p>5 published by a vendor in it, and the Court also has an</p> <p>6 instruction for you on that.</p> <p>7 And we showed you here, this is Exhibit 257,</p> <p>8 it's a demonstrative, but it's nothing of the sort you</p> <p>9 haven't seen before. It's one of these big catalogs.</p> <p>10 We don't get them in the mail so much anymore, but we</p> <p>11 used to. And something like this pretty clearly meets</p> <p>12 that Court definition. You can apply this pretty</p> <p>13 well. It's an organized collection. You have got the</p> <p>14 ladies clothes at the beginning. Then it goes to kids</p> <p>15 and boots and shoes and so on, product by product</p> <p>16 organized. It's about items. Things Sears is selling</p> <p>17 with associated information. Published by Sears.</p> <p>18 They are a seller, a distributor, whatever you want to</p> <p>19 call it. Includes things like a part number, price,</p> <p>20 catalog number, vendor name. Sears is on the front.</p> <p>21 It may not be on every page, but certainly on the</p> <p>22 front.</p> <p>23 I don't know if it has a vendor ID, but this</p> <p>24 list isn't something that's required that you have to</p> <p>25 have all of these. That's why it has the word</p>	<p style="text-align: right;">3177</p> <p>1 what the patent says. What about that last claim?</p> <p>2 I'll just talk about that a little bit. That 12th</p> <p>3 claim. That's Claim 1 of the '172 patent.</p> <p>4 Now, that claim has a claim element that</p> <p>5 refers to something called an order list. So I want</p> <p>6 to show you the Court's definition of that in slide</p> <p>7 49. So even that claim requires a means for</p> <p>8 generating an order list, which is a list of desired</p> <p>9 catalog items. So here's where that concept of</p> <p>10 catalog comes into play here.</p> <p>11 And if we look at slide 49A, Dr. Weaver, his</p> <p>12 analysis was entirely reliant on his opinion that the</p> <p>13 Lawson system had catalogs in it. And that even</p> <p>14 included this claim.</p> <p>15 And if we could go to the next slide here.</p> <p>16 This was Dr. Weaver's testimony specific to that Claim</p> <p>17 1 of the '172 patent. It's kind of a long question</p> <p>18 here, but what's being shown here is his opinion about</p> <p>19 Lawson infringing that claim, and specifically the</p> <p>20 part of that claim that refers to an order list, that</p> <p>21 was based in part on his analysis concluding that the</p> <p>22 desired items - do you remember an order list is a</p> <p>23 list of desired catalog items - included in results of</p> <p>24 searches of product catalogs, and that's what he</p> <p>25 called catalog items. That's how he looked at it for</p>